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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2009-181

11 **KATHRYN E. NEWBURN**
12 1301 Sanchez Avenue
Burlingame, CA 94010
13 Registered Nurse License No. 259066
Public Health Nurse Certification No. 38263
14 Nurse Practitioner Certification No. 4823
Nurse Practitioner Furnishing No. 4823
15 Nurse Midwife Certification No. 636

A C C U S A T I O N

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 (Board), Department of Consumer Affairs.
- 22 2. On or about January 1, 1975, the Board issued Registered Nurse License
23 Number 259066 to Kathryn E. Newburn (Respondent). The license was in full force and effect at
24 all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.
- 25 3. On or about June 6, 1985, the Board issued Public Health Nurse
26 Certification Number 38263 to Respondent. The public health nurse certification was in full
27 force and effect at all times relevant to the charges brought herein and will expire on July 31,
28 2009, unless renewed.

4. On or about January 13, 1989, the Board issued Nurse Practitioner Certification Number 4823 to Respondent. The nurse practitioner certification was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

5. On or about March 26, 2008, the Board issued Nurse Practitioner Furnishing Number 4823 to Respondent. The furnishing number will expire on July 31, 2009, unless renewed.

6. On or about May 29, 1987, the Board issued Nurse Midwife Certification Number 636 to Respondent. The nurse midwife certification was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

JURISDICTION

7. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

8. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

9. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY / REGULATORY PROVISIONS

10. Code section 2761 states:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions. . .”

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1 11. California Code of Regulations, title 16, section 1442, provides that “gross
2 negligence,” as used in Code section 2761, “includes an extreme departure from the standard of
3 care which, under similar circumstances, would have ordinarily been exercised by a competent
4 registered nurse. Such an extreme departure means the repeated failure to provide nursing care as
5 required or failure to provide care or to exercise ordinary precaution in a single situation which
6 the nurse knew, or should have known, could have jeopardized the client's health or life.”

7 COST RECOVERY

8 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
9 request the administrative law judge to direct a licensee found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
11 and enforcement of the case.

12 FACTUAL BACKGROUND

13 13. Respondent, a Certified Nurse Midwife, owns a midwifery practice called
14 Peninsula Midwifery in Burlingame, California. Her practice includes midwifery care and home
15 delivery services for qualifying clients. On or about May 16, 2006, Respondent accepted S.W.
16 into midwifery care for a home birth. S.W. was at 32.4 weeks gestation at the time and had been
17 receiving prenatal care through Kaiser Permanente in Redwood City, California, since
18 approximately December 16, 2005. S.W. sought duplicate prenatal care from Respondent in
19 order to deliver her baby at her Redwood City home rather than at Kaiser hospital. She elected to
20 continue her prenatal appointments at Kaiser in addition to her care by Respondent.

21 14. Upon entering Respondent's care, S.W. agreed to provide Respondent
22 with copies of her Kaiser prenatal chart and relevant tests and lab work performed through
23 Kaiser, including the results of a Group B streptococcus (GBS)¹ culture once that test was

24
25 1. GBS is a common bacteria carried by many people that causes illness in newborn
26 babies. Transmitted from mother to baby during the birth process, it is the most common cause
27 of life-threatening infections in newborns, including sepsis, meningitis and pneumonia. The
28 CDC (Centers for Disease Control and Prevention) recommends that pregnant woman be tested
for GBS at 35 to 37 weeks gestation through a minimally invasive sampling from the vagina
and rectum. If testing returns a positive culture for GBS, transmission to the newborn can be
prevented by intravenous administration of antibiotics at the time of labor.

1 performed later in S.W.'s pregnancy. At her appointments on or about July 7 and 14, 2006, S.W.
2 told Respondent that all lab work, including the GBS culture, were normal. Respondent did not
3 obtain copies of S.W.'s GBS culture results from Kaiser before S.W. went into labor.
4 Respondent did not perform a repeat GBS test on S.W. to establish S.W.'s GBS status before she
5 went into labor .

6 15. S.W. went into labor on or about the morning of July 20, 2006.
7 Respondent arrived at the client's home around noon. Spontaneous rupture of the membranes
8 occurred at approximately 12:39 p.m. and Respondent noted that moderate meconium was
9 present.² Delivery of a baby girl occurred at approximately 1:03 p.m. with an initial Apgar score
10 of 4 at one minute post-birth and 7 at five minutes post-birth.³ The infant required six minutes of
11 resuscitation, including suctioning for meconium stained fluid and positive pressure ventilation,
12 followed by the administration of free flow oxygen per oxygen tubing.

13 16. Respondent monitored the infant until approximately 4:10 p.m., at which
14 time she noted the baby to have persistent tachypnea (rapid breathing) and blood-oxygen
15 readings between 88 and 92 percent. Respondent determined that the newborn's improvement
16 was unacceptable and preparations were made for transport to Kaiser hospital. At approximately
17 4:50 p.m., the infant began grunting and Respondent phoned Kaiser hospital. She spoke with the
18 staff neonatologist and reported that the infant was born at home with meconium staining,
19 possible meconium aspiration, was grunting intermittently and had a respiration rate between 70
20 and 90 for the last few hours. The neonatologist told Respondent that the infant was unstable and
21 instructed her to call 911 or otherwise immediately transport the baby to Kaiser hospital.
22 Respondent drove the baby and her parents to the hospital; she did not offer the parents the
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24 2. Meconium is an infant's first stools, composed of materials ingested during gestation.
25 Meconium is normally stored in the infant's intestines until after birth, but sometimes, often in
26 response to distress, it is expelled into the amniotic fluid prior to birth or during labor.
Respiratory problems may occur if the baby then aspirates the contaminated fluid.

27 3. Apgar scoring is a method of summarily evaluating the health of newborn babies
28 immediately after childbirth based on five simple criteria resulting in a score from zero to 10.

option of transport by ambulance.

17. Upon arrival, the baby was markedly cyanotic (turning blue) with labored breathing; she was admitted to the Level II nursery and ultimately transferred to the Neonatal Intensive Care Unit at Kaiser Hospital in Santa Clara for continued distress with a high risk of Persistent Pulmonary Hypertension.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

18. Respondent is subject to disciplinary action for gross negligence pursuant to Code section 2761, subdivision (a)(1), in that she failed to establish the GBS status of a pregnant client prior to delivering the client's baby in a home birth, as described in paragraphs 13 through 17, above.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

19. Respondent is subject to disciplinary action for gross negligence pursuant to Code section 2761, subdivision (a)(1), in that she failed to immediately transport to the nearest hospital an infant exposed to particulate meconium, demonstrating depressed respiration and born to a mother with an undocumented GBS culture, as described in paragraphs 13 through 17, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 2761, subdivision (a), in the home delivery of a pregnant patient whose GBS status was undocumented, as described in paragraphs 13 through 17, above.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 259066, issued
5 to Kathryn E. Newburn;

6 2. Revoking or suspending Public Health Nurse Certificate Number 38263,
7 issued to Kathryn E. Newburn;

8 3. Revoking or suspending Nurse Practitioner License Certificate 4823,
9 issued to Kathryn E. Newburn;

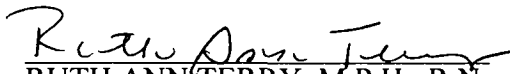
10 4. Revoking or suspending Nurse Practitioner Furnishing Number 4823,
11 issued to Kathryn E. Newburn;

12 5. Revoking or suspending Nurse Midwife License Number 636, issued to
13 Kathryn E. Newburn;

14 6. Ordering Kathryn E. Newburn to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and,

17 7. Taking such other and further action as deemed necessary and proper.

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19 DATED: 7/26/09

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21 
22 RUTH ANN TERRY, M.P.H., R.N.
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
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